

Assembly Bill No. 506

CHAPTER 153

An act to amend Section 121020 of the Health and Safety Code, relating to public health.

[Approved by Governor August 26, 2013. Filed with
Secretary of State August 26, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

AB 506, Mitchell. HIV testing: infants.

Existing law provides that a child may come within the jurisdiction of the juvenile court and become a dependent child of the court in, among others, cases of abuse and neglect. Under existing law, when a minor has been, or has a petition filed with the court to be, adjudged a dependent child of the court, the court may authorize, or order that a social worker may authorize, medical care for the minor, as prescribed. Under existing law, a social worker may, without court order, authorize medical care for a minor in emergency situations, as specified.

Existing law authorizes a peace officer or social worker to take into temporary custody a minor when there is reasonable cause for believing that the minor is in immediate need of medical care or is in immediate danger, as specified. Under existing law, when a minor is taken into temporary custody and is in need of medical care, the social worker may, upon recommendation of the attending physician and surgeon, authorize the performance of medical care, as specified.

Existing law provides that a minor under 12 years of age is deemed not competent to give consent for an HIV test to be performed, and authorizes the minor's parent, guardian, conservator, or other person lawfully authorized to make health care decisions on behalf of the minor to provide consent for the test. Under existing law, a court may also provide consent for the test to be performed on a minor who is adjudged to be a dependent child of the court.

This bill would authorize a social worker to provide consent for an HIV test to be performed on an infant who is less than 12 months of age when the infant has been taken into temporary custody or has been, or has a petition filed with the court to be, adjudged a dependent child of the court and the infant is receiving medical care if, among other things, the attending physician and surgeon determines that HIV testing is necessary to render appropriate care to the infant. The bill would provide that if an infant tests positive for HIV infection and the physician and surgeon determines that immediate HIV medical care is necessary to render appropriate care to that infant, that care shall be considered emergency medical care that may be authorized, without court order, by a social worker.

Existing law requires health care providers and laboratories to report cases of HIV infection to a local health officer, as specified.

This bill would require, if an infant tests positive for HIV infection, the social worker to provide to the physician and surgeon any available contact information for the biological mother for purposes of reporting the HIV infection to the local health officer.

The people of the State of California do enact as follows:

SECTION 1. Section 121020 of the Health and Safety Code is amended to read:

121020. (a) (1) When the subject of an HIV test is not competent to give consent for the test to be performed, written consent for the test may be obtained from the subject's parents, guardians, conservators, or other person lawfully authorized to make health care decisions for the subject. For purposes of this paragraph, a minor shall be deemed not competent to give consent if he or she is under 12 years of age.

(2) Notwithstanding paragraph (1), when the subject of the HIV test is a minor adjudged to be a dependent child of the court pursuant to Section 360 of the Welfare and Institutions Code, written consent for the test to be performed may be obtained from the court pursuant to its authority under Section 362 or 369 of the Welfare and Institutions Code.

(3) (A) Notwithstanding paragraphs (1) and (2), if the subject of the test is an infant who is less than 12 months of age who has been taken into temporary custody pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code or who has been, or has a petition filed with the court to be, adjudged a dependent child of the court pursuant to Section 360 of the Welfare and Institutions Code, the social worker may provide written consent for an HIV test to be performed when the infant is receiving medical care pursuant to Section 369 of the Welfare and Institutions Code, if all of the following have occurred:

(i) The attending physician and surgeon determines that HIV testing is necessary to render appropriate care to the infant and documents that determination. When deciding whether HIV testing is necessary, the physician and surgeon shall consider appropriate factors, either known to the attending physician and surgeon or provided to the attending physician and surgeon by the social worker, including, but not limited to, whether the infant has a parent with a history of behavior that places the parent at an increased risk of exposure to HIV, or whether the infant is a victim of sexual abuse, which has placed the child at risk of exposure to HIV.

(ii) The social worker provides known information concerning the infant's possible risk factors regarding exposure to HIV to the attending physician and surgeon.

(iii) The social worker has made reasonable efforts to contact the parent or guardian but was unable to do so, and the social worker has documented his or her efforts to contact that person.

(B) The attending physician and surgeon and the social worker shall comply with all applicable state and federal confidentiality and privacy laws, including Section 121025, to protect the confidentiality and privacy interests of both the infant and the biological mother.

(b) Written consent shall only be obtained for the subject pursuant to paragraphs (1) and (2) of subdivision (a) when necessary to render appropriate care or to practice preventative measures.

(c) The person authorized to consent to the test pursuant to subdivision (a) shall be permitted to do any of the following:

(1) Notwithstanding Sections 120975 and 120980, receive the results of the test on behalf of the subject without written authorization.

(2) Disclose the test results on behalf of the subject in accordance with Sections 120975 and 120980.

(3) Provide written authorization for the disclosure of the test results on behalf of the subject in accordance with Sections 120975 and 120980.

(d) (1) If an infant tested for HIV pursuant to paragraph (3) of subdivision (a) tests positive for HIV infection and the physician and surgeon determines that immediate HIV medical care is necessary to render appropriate care to that infant, the provision of HIV medical care shall be considered emergency medical care, pursuant to subdivision (d) of Section 369 of the Welfare and Institutions Code.

(2) If an infant tests positive for HIV in a test performed pursuant to this section, the social worker shall provide to the physician and surgeon any available contact information for the biological mother for purposes of reporting the HIV infection to the local health officer pursuant to Section 121022. Cases reported to the local health officer under this subdivision are subject to the requirements of Section 120175.